City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Assistant Planner Malathy Subramanian, City Attorney
Date Written:	July 30, 2009
Meeting Date:	August 10, 2009
Subject:	ZT02-09: Interim Urgency Ordinance, Extending the Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries for Ten (10) Months and Fifteen (15) Days

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BACKGROUND

Government Code section 65856 allows a city to adopt a zoning ordinance that prohibits any uses that conflict with a contemplated zoning proposal that the City Council, Planning Commission, or planning department is considering or studying or intends to study within a reasonable time to protect the public safety, health, and welfare. The urgency ordinance requires a four–fifths vote of the City Council for adoption and shall be effective for no more than 45 days. The City Council may further extend the urgency ordinance for 10 months and 15 days after a noticed public hearing, and may subsequently extend the ordinance for one additional year. Ten days prior to the expiration of the ordinance, the City Council shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance.

HISTORY

On July 27, 2009, the City Council adopted Interim Urgency Ordinance 587, establishing a moratorium on the establishment and/or operation of medical marijuana dispensaries. The Council directed City staff to study this use along with other uses as part of the zoning update that will follow the Downtown Specific Plan process. The moratorium is tentatively scheduled to terminate on September 10, 2009, unless extended by the City Council. The City Council has no additional regularly scheduled public meetings prior to the expiration date of the moratorium, besides the subject meeting.

To alleviate the conditions that led to the adoption of Interim Urgency Ordinance 587, subsequent to the establishment of the moratorium, the City is taking the following steps:

1. Planning Services Division staff selected a spectrum of sixteen (16) local jurisdictions to study in terms of land use classification regulations. City staff has begun compiling and analyzing these regulations;

2. Planning Services Division staff, the Police Department, and the City Attorney's office are continuing to conduct research into the possible and likely impacts of medical marijuana dispensaries and into regulations for the City to adopt in order to mitigate such impacts;

3. Planning Services Division staff is continuing to gather factual data regarding the adverse impacts experienced by other cities that have permitted medical marijuana dispensaries. This information will be processed to determine the likelihood that such impacts might result in the City of Lafayette in the event a medical marijuana dispensary is established in the City; and

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4. Planning Services Division staff continues to conduct research into the City's options for permanent regulation of medical marijuana dispensaries. This research includes a review of city ordinances in California that either prohibit or regulate medical marijuana dispensaries.

Therefore, this staff report, if approved and issued by the City Council shall serve to satisfy the requirement for a written report, pursuant to Government Code section 65856(d).

RECOMMENDATION

Adopt Interim Urgency Ordinance 588, extending the temporary moratorium on the establishment and operation of medical marijuana dispensaries for ten (10) months and fifteen (15) days, and approve and issue this report describing the measures taken to alleviate the conditions which led to the adoption of Interim Urgency Ordinance 587 pursuant to Government Code section 65858.

ATTACHMENTS

A. Draft Interim Urgency Ordinance No. 588
B. Interim Urgency Ordinance No. 587

DRAFT

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Interim Urgency Ordinance of the City Council of the City of Lafayette, California Making Findings and Extending the Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries for Ten (10) Months and Fifteen (15) Days	)))))	Ordinance No.588

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq. and entitled the Compassionate Use Act of 1996 ("the Act").
2. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain it and use it under limited, specified circumstances.
3. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act.
4. The Lafayette Municipal Code currently does not specifically address or regulate medical marijuana dispensaries.
5. California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, loitering around the dispensaries, and increase in driving while under the influence of marijuana.
6. To address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Lafayette to study the potential impacts such facilities may have on the public health, safety, and welfare.
7. Based on the foregoing, on July 27, 2009, the City Council found that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to completion of the City's contemplated study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare, and that a forty-five (45) day temporary moratorium on the issuance of such permits, licenses, and entitlements was thus necessary.
8. On August 10, 2009, after a duly noticed public hearing the City Council adopted Urgency Ordinance 588, extending the temporary moratorium on the establishment and operation of medical marijuana dispensaries for ten (10) months and fifteen (15) days.

Section 2. Imposition of Moratorium.

1. In accordance with the authority granted the City of Lafayette under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of ten (10) months and fifteen (15) days.
2. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility or location

where a primary caregiver makes available, sell, transmit, give, or otherwise provide medical marijuana to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this Ordinance, the terms "primary caregiver," "qualified patient," and "person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq.

3. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.5, et seq.: (1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

Section 3. CEQA. The City Council hereby finds and determines, that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 5. Effective Date. This Ordinance shall become effective immediately following the initial forty-five (45) day moratorium if adopted by at least a four-fifths vote of the City Council and shall be in effect for ten (10) months and fifteen (15) days, concluding on July 25, 2010, unless extended by the City Council as provided for in the Government Code.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was passed and adopted at a meeting of the Lafayette City Council held on August 10, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Don Tatzin, Mayor

_____
Joanne Robbins, City Clerk

COPY

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Interim Urgency Ordinance of the City Council of the City of Lafayette, California Making Findings and Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries	)	Ordinance No.587

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq. and entitled the Compassionate Use Act of 1996 ("the Act").
2. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain it and use it under limited, specified circumstances.
3. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act.
4. The Lafayette Municipal Code currently does not specifically address or regulate medical marijuana dispensaries.
5. California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, loitering around the dispensaries, and increase in driving while under the influence of marijuana.
6. To address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Lafayette to study the potential impacts such facilities may have on the public health, safety, and welfare.
7. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to completion of the City's contemplated study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary.

Section 2. Imposition of Moratorium.

1. In accordance with the authority granted the City of Lafayette under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of forty-five (45) days.
2. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility or location where a primary caregiver makes available, sell, transmit, give, or otherwise provide medical marijuana to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this Ordinance, the terms "primary caregiver," "qualified

patient," and "person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq.

3. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.5, et seq.: (1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

Section 3. CEQA. The City Council hereby finds and determines, that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for 45 days from the date of adoption unless extended by the City Council as provided for in the Government Code.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was passed and adopted at a meeting of the Lafayette City Council held on July 27, 2009 by the following vote:

AYES:	Vice Mayor Andersson, Council Members Anderson, Anduri, and Federighi
NOES:	None
ABSTAIN:	None
ABSENT:	Tatzin

Don Tatzin

Don Tatzin, Mayor

Joanne Robbins

Joanne Robbins, City Clerk